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3696	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/867,622	NAGAMOTO ET AL.	
	Examiner	Art Unit	
	MARTIN A. GOTTSCHALK	3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-6,8-11,13-18,37 and 45* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-6,8-11,13-18,37 and 45* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Notice to Applicant

1. Prior to this Office Action, a Final Office Action mailed 03/05/2008 was pending, but was withdrawn. Following the withdrawal, a Requirement for Restriction/Election was mailed 11/26/2008, to which a response was received 02/26/2009. This Office Action is thus responsive to Applicant's election, and further, will respond to Applicant's amendments and arguments received in the response of 10/03/2007, which was Applicant's response pending prior to the Final Office Action that was withdrawn.

2. Claims 1, 3-6, 8-11, 13-18, 37, and 45 are pending and have been examined. In Applicant's response of 10/03/2007, no substantive amendments were presented, and claims 1, 4-6, 10, 11, 14, 15, 17, 18, and 37 were amended non-substantively. Claim 45 is new as of Applicant's Response to Restriction/Election received 02/26/2009. The remaining claims have been cancelled.

Election/Restrictions

3. Applicant's election without traverse of claims 1, 3-6, 8-11, 13-18, and 37 in the reply filed on 02/26/2009 is acknowledged.

Typographical Error

4. The Examiner acknowledges the errors noted by Applicant in referring to claim rejections under the *35 USC § 103(a)* section in the previous Office Action on the merits as being under *35 USC § 102(b)* (i.e. this was stated in the associated statements of rejection). There were no section 102 rejections, and Applicant was correct in assuming the rejections were under *35 USC § 103(a),* since more than one reference was used in each rejection.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1, 3-6, 8-11, 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surwit et al (US Pat# 6,024,699, hereinafter Surwit) in view of Hokkanen et al (US Pat# 6,993,666, hereinafter Hokkanen).

A. As per claim 1, Surwit discloses a medical checkup network system comprising:

a patient terminal for measuring predetermined biodata of each patient (Surwit: Fig. 2; col 8, lns 18-36) including at least one of a blood pressure and a body temperature (Surwit: col 7, lns 42-44);

a doctor terminal through which medical staff is able to view the biodata (Surwit: col 9, lns 50-58; Fig. 1, item 16), and;

a center server for storing information data received from said patient terminal and said doctor terminal, wherein:

said patient terminal and doctor terminal are connected with each other via said center server over a communication network (Surwit: col 9, lns 31-34; Fig. 1, item 17).

Surwit fails to explicitly disclose the remaining features of the claim wherein

said patient terminal includes an instrument data memory for storing an identification number to discriminate said patient terminal from other terminals, and said patient terminal is operable to execute procedures of connecting said patient terminal to said center server over the communication network, transmitting the identification number upon installation of said patient terminal at the home of the patient , receiving, over the communication network, patient terminal data corresponding to the identification number which is registered preliminarily in said center server, and storing the received patient terminal data,

and

wherein the patient terminal data is data related to said patient terminal to be used by the patient.

However, these features are well known in the art as evidenced by the teachings of Hokkanen, see Hokkanen col 2, ln 1 to col 3, lns 43, and note in particular the teaching of a password associated with a particular terminal (i.e. it discriminates this terminal from others, Hokkanen: col 2, lns 17-23), and that a password is automatically sent from the terminal to the server upon logon (Hokkanen: col 2, lns 24-31, the Examiner notes that this could occur upon installation at the home of a patient).

It would have obvious to one of ordinary skill in the art at the time of the invention to incorporate to modify the system of Surwit with the teachings of Hokkanen with the motivation of automating the log on procedure from a terminal, reducing the time and effort required to log on, and improving system security (Hokkanen: col 1, lns 47-56).

NOTE: In subsequent claims combining the teachings of Surwit and Hokkanen, the same motivation to combine references applies as is provided above for claim 1.

B. As per claim 3, Surwit discloses the medical checkup network system according to claim 1, wherein said center server includes an authorizing section for providing the patient, said patient terminal, the medical staff or said doctor terminal registered in the center server with access right to enter a data or access the data stored in the center server (Surwit: col 11, lns 34-57).

C. As per claim 4, Surwit discloses the medical checkup network system according to claim 1, wherein the center server has an administrator terminal function for registering the user of said medical checkup network system and inputting the various medical data in the center server (Surwit: col 9, lns 25-27 and 50-57).

D. As per claim 5, Surwit discloses the medical checkup network system according to claim 4, wherein

the center server is operable to store at least one software program to said patient terminal, said doctor terminal or said administrator terminal, and said patient, doctor, and administrator terminals are operable to download the software program from the center server for use (Surwit: col 8, lns 47-55, i.e. "…internal software of a PPM is configurable…via a PAC server," is read on by downloading software to the patient terminal; see also col 11, lns 24-30. The Examiner considers providing a PPM with illness specific software to be a form of downloading software to the patient terminal.).

E. As per claims 6, Surwit discloses the medical checkup network system according to claims 5, wherein

the software program of said patient terminal includes version data which is indicative of a version of the software program;

and

said patient terminal is operable to compare the version data of the software program in said patient terminal with latest version data managed in the center server upon communicating with said center server, and when the version data is older than update version data, systematically download a latest version of the software program from said center server for upgrading the version of the

software program in said patient terminal (Surwit: col 8, lns 47-55, reads on "…case manager can make adjustments…").

F. As per claims 8, Surwit discloses the medical checkup network system according to claims 4 wherein

said administrator terminal is operable to register, in said center server, an access right for the patient, said patient terminal, a doctor of the medical staff or the doctor terminal (Surwit: col 11, lns 34-57).

G. As per claims 9, Surwit discloses the medical checkup network system according to claims 4, wherein

said administrator terminal is operable to enter the patient terminal data (Surwit: col 11, lns 24-33).

H. As per claims 10, Surwit discloses, the medical checkup network system according to claims 9, wherein

the administrator terminal is arranged for executing at least one of procedures comprising:

a procedure of entering the identification number which identifies said patient terminal;

a procedure of entering a name of the patient corresponding to the identification number;

a procedure of entering identification code corresponding to the patient name;

a procedure of entering at least one measurement (Surwit: Fig. 11; col 19, lns 48-65) item corresponding to the patient name (Surwit: Fig. 10C, note the field displaying "White, Doug", the patient's name); and

a procedure of entering at least one name of an instrument which senses biodata corresponding to the measurement item.

I. As per claim 11, Surwit discloses the medical checkup network system according to claim 1, wherein

said doctor terminal includes a biodata threshold setting section for setting a threshold of the biodata for each patient (Surwit: col 16, lns 50-57, threshold read on by "default physiological…parameters…"),

and

said center server includes an alert section for receiving the threshold set by said biodata threshold setting section of said doctor terminal and providing said doctor terminal with an alert when the level of the biodata of the patient measured by said patient terminal exceeds the threshold (Surwit: col 17, ln 58 to col 18, ln 5, note the listing by severity, i.e. a type of alert).

J. As per claims 13, Surwit discloses the medical checkup network system according to claims 1 respectively, wherein

the patient terminal has an initial connection setting section for communicating with the center server to execute a predetermined process upon being energized (Surwit: col 11, lns 10-15, reads on “dial-up”), and the initial connection setting section is arranged for performing at least one of

automatically updating the software content,

receiving the medical support data including the schedule data and the advice data (Surwit: col 8, lns 10-14),

and

transmitting measurement data which is not transferred.

K. As per claim 14, Surwit discloses the medical checkup network system according to claim 1, wherein

said patient terminal includes a communicating section for measuring at least one kind of biodata to transmit the measured biodata to said center server (Surwit: Table 1),

said center server includes a database for storing the biodata received from said patient terminal (Surwit: col 9, lns 25-27),

and

said doctor terminal includes a biodata displaying section for communicating with said center server and displaying the biodata stored in said database (Surwit: col 10, lns 22-41).

L. As per claim 15, Surwit discloses the medical checkup network system according to claim 14, wherein said patient terminal further comprises:

a measurement interface connected with at least one sensor for measuring the biodata (Surwit: col 7, lns 40-45),

a biodata memory for storing the biodata measured by the at least one sensor and received through said measurement interface (Surwit: col 7, lns 51-53);

and

a communicating section for transmitting the biodata stored in the biodata memory and receiving the patient terminal data from said center server upon installation of said patient terminal in the home of the patient (Surwit: col 7, lns 64-65; col 8, lns 7-17).

M. As per claim 16, Surwit fails to teach the features of the claim, however Hokkanen discloses the medical checkup network system according to claim 1, wherein the patient terminal data includes at least one of:

a name of the patient corresponding to the identification number of said patient terminal (Hokkanen: col 5, lns 30-34),

an identification code corresponding to the patient name,

a measurement item corresponding to the patient name,

an instrument name of a sensor for measuring the biodata and corresponding to the measurement item,

and

control data of the sensor.

N. As per claim 17, Surwit discloses the medical checkup network system according to claim 14, wherein said patient terminal includes:

a measurement interface connected with at least one sensor for measuring the biodata (Surwit: col 7, lns 40-45);

a biodata memory for storing the biodata measured by the at least one sensor and received through said measurement interface (Surwit: col 7, lns 51-53);

and

said communicating section for transmitting the biodata stored in said biodata memory to said center server (Surwit: col 7, lns 64-65; col 8, lns 7-17).

an instrument data memory for storing a sensor identification number to discriminate the at least one sensor from another sensor (Surwit: col 5, lns 59-65. The Examiner notes that the disclosed "computer-usable memory" could be used to store identification numbers for monitoring equipment.).

Surwit fails to disclose the remaining features of the claim which are taught by Hokkanen who discloses

a recording medium interface for receiving the biodata from a detachable recording medium upon installation of said patient terminal in the home of the patient (Hokkanen: col 4, lns 25-64, detachable medium reads on SIM card.).

O. As per claim 18, Surwit discloses the medical checkup network system according to claim 17, wherein the patient terminal is operable to

receive, upon installation of said patient terminal, from the detachable recording medium, patient terminal data including at least one of

name of the patient corresponding to identification number of the patient terminal,

an identification code corresponding to the patient name (Hokkanen: col 4, lns 56-64),

a measurement item corresponding to the patient name,

an instrument name of the health sensor corresponding to the measurement item,

and

control data of the sensor corresponding to the measurement item,

and

store the received patient terminal data (Hokkanen: col 4, lns 25-64, reads on SIM card.).

P. Claim 41 is cancelled.

8. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Surwit in view of Hokkanen, and further in view of Vogt et al (US Pat# 4,470,047, hereinafter Vogt).

A. As per claim 37, Surwit teaches the system of claim 1 wherein

said center server includes a section for receiving and storing the sensitivity level determined by said sensitivity setting section of said doctor terminal (Surwit: col 8, lns 47-53 teaches sending sensitivity levels to the PAC server – i.e. center server; col 9, lns 50-58 teaches PAC server storing data. See also col 11, lns 24-30 which disclose a case manager – i.e. doctor terminal – transmitting to the PAC server.),

and

said patient terminal includes a section for communicating with said center server to receive the sensitivity level and modifying the sensitivity of the sensor based on the received sensitivity level (Surwit: col 7, lns 47-60, note "Automated…adjustment algorithms…are stored within each patient's PPM…" see also Surwit: col 8, lns 21-25 and lns 47-53 which teaches communication with the PAC server and remote adjustment of algorithms by a case manager.).

Surwit further discloses

said doctor terminal includes a sensitivity setting section (Surwit: col 11, lns 25-30 which disclose a case manager – i.e. via a doctor terminal - remotely modifying algorithms residing in the patients PPM) for determining a level of sensitivity for receiving, at said patient terminal, a signal output from a sensor (Surwit: col 16, lns 40-57, in particular lns 50-53. Note that the passage describes an example of the operation of the disclosed system using a particular type of sensor - i.e. one for blood glucose - and that other sensors could be used in comparable fashion such as the body temperature sensor cited above. Note further the example provided of a patient with condition B, i.e. hypoglycemia, where this sensor is used to detect the presence of hypoglycemia, thus the Examiner points out that the blood glucose detector can also be considered to be a hypoglycemia sensor. The passage further points out that the "frequency" parameter is a type of sensitivity for this sensor. In other words, in order to detect hypoglycemia, the frequency <i.e. sensitivity> must be set high enough. If the frequency <i.e. sensitivity> is too low, the detection of hypoglycemia by the hypoglycemia sensor would fail to occur. In the case provided in the passage, the patient is monitored at an adequate frequency, thus this hypoglycemia sensitivity parameter need not be adjusted. Note that if the converse situation

existed, i.e. higher sensitivity was required, the passage discloses that this alteration is done at the doctor terminal - reads on "…patient parameters are inherited from the doctor…" – i.e. the doctor is providing the parameters, note lns 54-55 from the cited passage.).

Surwit (and Hokkanen) fails to explicitly disclose setting, at said doctor terminal, the sensitivity of detection of a physical parameter by a sensor whereby after sensing the physical parameter, the sensor provides a signal output to said patient terminal.

However, this feature is well known in the art as evidenced by the teachings of Vogt who discloses a sensor for detecting fire or products of combustion (Vogt: col 2, lns 62-66; col 29, lns 30-45, patient terminal reads on "transponder"), where the sensitivity of the sensor is continuously monitored at a controller (read on by doctor terminal), and where the sensitivity adjustment for the remotely located sensor (reads on "transducer") is performed at the controller.

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Vogt into the system of Surwit with

the motivation of providing adjustable sensitivity to a sensor that is remote from its controller (Vogt: col 1, lns 13-35; col 2, lns 20-25).

9. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Surwit in view of Hokkanen, and further in view of Root et al (US Pat# 6,013,007).

A. As per claim 45, Surwit teaches automatically transmitting data to a central server at specified intervals for patient monitoring (Surwit: TABLE 1), and Hokkanen teaches automatically uploading data at log-on from a terminal (Hokkanen: abstract), but Surwit and Hokkanen fail to explicitly teach the upload occurring when the terminal is energized. However, the Examiner notes that this procedure is well known, such as in the procedures that can be implemented in a MS Windows startup routine. In addition, Root teaches upload of human physiological data after acquisition into a terminal device, and subsequent to being energized and connected to a phone line (i.e. the system is energized, Root: col 4, lns 60-67; col 5, lns 58-65).

It would have been obvious at the time of the invention to modify the remote medical data acquisition system of Surwit with automatic uploading upon energizing taught by Root in order to assist health care providers identify patients in need of attention (Surwit: col 2, lns 25-31).

Response to Arguments

10. Applicant's arguments filed 10/03/2007 have been fully considered but they are not found to be persuasive. Applicant first argues that certain features of claim 1 are not taught by the applied Hokkanen reference. The Examiner respectfully disagrees and directs Applicant to the citations and explanations provided above for the rejection of claim 1.

Applicant then argues that the Surwit and Vogt references do not teach the feature of adjusting a biodata sensor in claim 37. In response, Applicant is directed to the detailed explanation of the rejection of this feature in the rejection of claim 37 above. The Vogt reference deals with remote control of the sensitivity of a sensor, which is the same problem addressed by the claim, thus the Examiner considers that this would have been available to one skilled in the sensor art.

Applicant further argues that a feature of claim 10 is not taught, however, Applicant must note that the claim is written in the alternative, and that the rejection is based on one of the alternatives not mentioned by Applicant in the argument for claim 10.

Applicant next argues that the features of claim 11 are not taught by the applied reference. The Examiner respectfully disagrees and directs Applicant to the citations and explanations provided above for the rejection of claim 11.

Applicant then asserts that the features of claim 13 are not taught by the applied reference, but fails to provide any justification for the assertion. The Examiner respectfully disagrees and directs Applicant to the citations and explanations provided above for the rejection of claim 13.

Applicant finally argues that the features of claim 17 are not taught by the applied reference. The Examiner respectfully disagrees and directs Applicant to the citations and explanations provided above for the rejection of claim 17. The Examiner further notes that the cited passage of Surwit teaches adequate structure (i.e. computer memory) that could be used for the intended use recited in the claim, i.e. storing a sensor identification number.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARTIN A. GOTTSCHALK whose telephone number is (571)272-7030. The examiner can normally be reached on Mon - Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on (571) 272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. G./
Examiner, Art Unit 3696

/Ella Colbert/
Primary Examiner, Art Unit 3696